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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/505,251

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Eva Binggeli

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EXAMINER

PRATT, HELEN F

ART UNIT

PAPER NUMBER

1761

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/505,251	<b>Applicant(s)</b> BINGGELI ET AL.	
	<b>Examiner</b> Helen F. Pratt	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 12, 13, 15, 16, 17, 20, 21 rejected under 35 U.S.C. 102(b) as being anticipated by Schieberle (XP-002249876) or Berchtold et al. (WO 03/041515).

Schieberle (XP-002249876) disclose a process as in claim 1 of making treated Brassica seeds by roasting sesame seeds, which contain 2-furfurylthiol. The reference discloses that roasting of the odorless sesame seeds generates an intense flavor (page 145, paragraphs 1-3).

Temperatures of 180 C for 30 minutes are disclosed as in claim 2 (page 145, paragraph 2).

Crushing the seeds is disclosed on page 147, para. 2. as in claim 3.

An extract and distillate is disclosed as in claims 4 and 5 using a hydrocarbon (page, 148).

The product is disclosed as in claims 4 and 5 and 6 and an extract thereof as in claim 7 (page 148).

A consumable or flavor preparation is seen to have been made as the composition is disclosed as above as in claim 8.

2-Furfurythiol (FFT) is disclosed as being made by the process of claim 1 (page 145, 1<sup>st</sup> col.) as in claims 12 and 15.

An increase in the concentration of FFT of 100% is seen to have resulted as in claim 13, since before roasting the sesame seeds were odorless, but afterwards an intense flavor was developed (page 145, 1<sup>st</sup> para. ).

The degree of concentration as in claims 16, 17, is seen to have been shown since the process has been shown as above. The product is considered to be a roasted brown material (page 147, 2<sup>nd</sup>. Para, page 148, 1 and 2<sup>nd</sup> col.'s) .

The product contains sesame seeds are from the family Brassica nigra as in claims 20 and 21.

Berchtold et al. disclose roasting seeds as in claim 1 from various families including cruciferum and brassica by continuously heating seeds to a predetermined temperatures (abstract). Times and temperatures as in claim 2 of up to 210 C for 10 minutes are disclosed on page 3, lines 14-18. The product is seen to have had a flavor modifying property since it was heated to within the claimed time as in claims 1 and 2.

Reducing the seeds or fragmenting them is disclosed on page 5, lines 15-20 as in claim 3.

Products are disclosed as in claims 6 and 7, as in claim 1 which is a whole or fragmented heat- treat seed as in claims 1-7 of the reference (page 10, lines 1-30).

The product is considered consumable as in claim 8 since that is the purpose of treating the seeds as in claim 8 (page 12, lines 15-20).

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Furfurylthiol (FFT) is seen to be increased to 100 % as in claims 12, 13, 15 since the process of heating to the claimed temperature has been shown as in claims 1 and 2.

Claims 1-7, 12, 15, 16, 20, 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Vasundhara et al. (XP 009014888).

Vasundhara discloses that the mustard seed (*Brassica Juncea* Linn) can be roasted which brings about a flavor change as in claim 1, to a temperature of 120 C for about 2 hours (claim 2), and ground as in claim 3 (abstract, page 685, 3<sup>rd</sup>, page 686, para. 1).

An extract is made as in claim 4 from methylene chloride and steam distilled as in claim 5 (page 686, lines 4 and 5).

A roasted powder is made as in claim 6 which is extracted as in claim 7 (page 686, 1<sup>st</sup> para.).

FFT is formed as in claim 12 (page 691 1<sup>st</sup> para.). The product containing FFT is formed as in claim 15 and claim 16.

*Brassica juncea* is disclosed as in claims 20 and 21.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 9-11, 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to the above claims above, and further in view of Lynn (3,697,290) .

Lynn discloses a non-elastic protein containing product where the protein is from seeds such as sesame seed meal or cotton seed or soybean meal, which are all Brassica seeds. The composition containing the seeds is heated to from 300 to 350 F (148 C to 176 ) Brassica seeds as in claims 9 and 10 are used in large amounts and combining the seeds with a flavor imparting amount as in claim 11 is disclosed as the seeds are combined with other food ingredients (See examples). As it is known that the treated seeds are edible, it would have been obvious to use them in particular amounts for their known functions. FFT is seen to have been found in the food products of Lynn, since the composition is cooked twice to within the claimed heating range, which develops the FFT (col. 6, lines 30-70). The particular amount of FFT as in claims 16-20 is seen to have been within the skill of the ordinary worker, since it is

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known that these seeds generate FFT, and in cooking one uses ingredients according to how they will make a product taste. Therefore, it would have been obvious to use known ingredients which contain FFT for their known function of imparting flavoring and nutrition.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 8-23-07

  
**HELEN PRATT**  
**PRIMARY EXAMINER**